

Deepwater Ports)
) Docket No. USCG-1998-3884
)

Sempra Energy International (“SEI”) hereby respectfully submits comments in response to the Notice of Proposed Rulemaking on deepwater ports, issued by the United States Coast Guard (“USCG”) on May 30, 2002, and reopened on August 19, 2002. SEI commends the USCG for providing interested parties the opportunity to identify areas in which the USCG can improve its deepwater-port regulations.

SEI's comments focus on the information that the USCG requires parties to include in their applications for deepwater ports. SEI believes that some of this information is unnecessary, burdensome, and, in some cases, competitively sensitive. By amending its regulations to exclude this information, the USCG could facilitate the development of deepwater ports.

SEI develops, operates, and owns natural gas and electric distribution utilities, as well as gas transmission systems, in Northern Mexico and the Southern Cone countries of Argentina, Chile, Peru, and Uruguay. SEI is currently

developing a major liquefied natural gas (“LNG”) receiving terminal in Northern Mexico. This LNG terminal will have a send-out capacity of approximately one billion cubic feet per day of natural gas. SEI is also currently planning to develop an offshore LNG terminal.

This offshore LNG terminal is likely to become subject to USCG jurisdiction soon (under amendments to the Deepwater Port Act). SEI thus has an immediate interest in the USCG’s deepwater-port regulations generally, and specifically, considering the likelihood that the USCG will apply its existing regulations to, or adopt similar regulations for, deepwater ports for natural gas. SEI’s comments are timely because SEI seeks here to promote the development of deepwater ports generally, regardless of whether they are designed for oil or natural gas.

II. COMMENTS

The USCG has asked in part: “[w]hat regulations are obsolete, unnecessary, redundant, or restrictive?” SEI responds as follows.

A. Existing Section 148.109(e)/Proposed Section 148.105(g) and Existing Section 148.109(p)/Proposed Section 148.105(s).

The USCG’s existing section 148.109(e) requires parties to include in their applications extensive financial information, including information about capacity and demand in the relevant PAD District. Comments filed in the USCG’s Advance Notice of Proposed Rulemaking explained why this section should be

eliminated. The USCG responded by stating that it would eliminate parts of this section, specifically subsections (e)(6)(i) and (ii), (e)(7) through (e)(13), and (f).¹ According to the USCG, these subsections reflect outdated concerns from the 1970s about the potential for deepwater ports to dominate the market.² SEI supports the USCG's decision to eliminate these subsections.

The USCG's proposed regulations, however, appear to retain a portion of the subsections that were intended to be omitted. As set forth above, the USCG stated that it would omit existing subsections (e)(7) through (e)(13) of section 148.109. But the language in existing subsection (e)(8) nonetheless appears in the proposed regulations, at proposed section 148.105 (g)(5).

Existing subsection (e)(8) and proposed subsection (g)(5) require an applicant to provide the anticipated total refinery capacity, total runs to stills, and total demand for gasoline, jet aviation fuel, distillate fuel oils, and other refinery products for each Refining District in the relevant PAD. Because the USCG properly found in its May 30, 2002 NOPR that it no longer requires this information, proposed Section 148.105(g)(5) should be deleted accordingly.

The USCG rejected in its May 30, 2002 NOPR, however, a request to eliminate existing section 148.109(e)(4) (the equivalent of proposed section 148.105(g)(3)), which requires applicants to show, essentially, the financial viability of their projects through projected: (1) throughput, (2) financial

¹ See USCG May 30, 2002 NOPR, 67 Fed. Reg. 37920, at 37922.

² Id.

statements (balance sheet and income statement), and (3) expenses for the deepwater port. SEI believes that the USCG should eliminate these requirements because they are unnecessary. As a practical matter, only sophisticated parties will be able to pursue the capital-intensive, deepwater-port business. Applicants should be left to determine whether they are developing a viable project. The USCG should also remove these requirements because they are designed to elicit commercially sensitive information.

The USCG further rejected in its May 30, 2002 NOPR a request to eliminate existing section 148.109(p) (the equivalent of proposed section 148.105(s)), wherein the USCG requires applicants to provide extensive information about onshore components. Specifically, this section requires, among other things:

- (1) A description of the location, capacity, and ownership of, and a preliminary design drawing for construction of new or expansion of existing onshore pipelines, storage facilities, refineries, petrochemical facilities, and transshipment facilities to be served by the deepwater port.
- (2) Location, capacity, and ownership of existing onshore pipelines, storage facilities, refineries, petrochemical facilities, and transshipment facilities to be served by the deepwater port.
- (3) A chart showing the location of all planned and existing onshore pipelines, storage facilities, refineries, and petrochemical facilities to be served by the deepwater port.

SEI respectfully requests the USCG to reconsider removing the existing section 148.109(p) and its twin in proposed section 148.105(s). By requiring an

applicant to disclose its plans for securing transportation and storage, the USCG could disadvantage the applicant in negotiations with pipelines for their services.

B. Existing Sections 148.109(g) and (g-1)/Proposed Sections 148.105(i)(2) and (j).

These sections require applications to include all certifications required by the Environmental Protection Agency under 33 U.S.C. 1341(a)(1) and required by the Coastal Zone Management Act of 1972, 16 U.S.C. 1456. The USCG should clarify that an applicant must submit completed **requests** for all required certifications -- to be submitted to the relevant agencies immediately (by either the applicant or the USCG) -- but that an applicant need not submit **approved** certifications. As clarified, these regulations would ensure that each applicant seeks all necessary certifications, yet also ensure that an application for a deepwater port filed with the Department of Transportation constitutes an application for all required Federal authorizations, as provided in the Deepwater Port Act.³

The purpose of the act is to provide a single Federal forum for licensing deepwater ports. This purpose would be frustrated if applicants were required to obtain various Federal certifications outside of the licensing process for their deepwater ports, as suggested by the USCG's regulations. Furthermore, the USCG will be improperly distanced from State proceedings under the Coastal

³ See Section 5(e)(2) of the Deepwater Port Act of 1974, 33 U.S.C. 1504(e)(2).

Zone Management Act if the USCG allows these State proceedings to advance outside of the USCG's licensing process.

C. Proposed Section 148.105(a)(5)

This section requires applicants to provide a statement indicating whether they or their affiliates in the past five years have filed for bankruptcy or have violated State or Federal laws, and whether they are involved in any outstanding litigation. The USCG should clarify that the USCG seeks information about outstanding litigation only to the extent that such litigation relates to any bankruptcy or violation of State or Federal law. The USCG should do so because this language could otherwise be interpreted to require applicants to undertake the unmanageable process of reporting every outstanding proceeding in which they and/or their affiliates are litigating any matter whatsoever, as plaintiffs and/or defendants.

D. Comments By El Paso Global LNG Company

On July 29, 2002, El Paso Global LNG Company filed comments in this proceeding to support many of the USCG's proposed changes to its regulations, and to recommend other changes that would facilitate the development of deepwater ports for natural gas. SEI agrees with those comments.

III. CONCLUSION

SEI appreciates the opportunity to comment on the USCG's regulations governing deepwater ports, and commends the USCG for seeking to encourage the development of additional deepwater ports. SEI hopes that the USCG will consider its comments, which are designed to identify "obsolete, unnecessary, redundant, or restrictive" application requirements.

Respectfully submitted this 18th day of September 2002.

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